

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-077-00892R

Parcel No. 090/07312-000-000

Roman Mirsky,  
Appellant,

vs.

Polk County Board of Review,  
Appellee.

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**Introduction**

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on September 22, 2016. Roman Mirsky was self-represented. Assistant Polk County Attorney Christina Gonzalez represented the Polk County Board of Review.

Mirsky is the owner of a residential, two-story home located at 285 49th Street, Des Moines. The home has 3265 square feet of above-grade finish and a walk-out basement with 1450 square-feet of living-quarters quality finish and 390 square-feet average quality finish. The site is 0.514 acres. (Ex. A.).

On March 30, 2015, the Polk County Assessor notified Mirsky that the January 1, 2015, assessment on the subject property was \$778,800, allocated as \$63,500 in land value and \$715,300 in building value. Mirsky protested to the Board of Review claiming the property was not equitably assessed as compared with assessments of other like property under Iowa Code section 441.37(1)(a)(1)(a). The Board of Review modified the assessment to \$756,300. Mirsky then appealed to PAAB reasserting his claim of inequity and his belief the correct assessed value is \$476,000.

## **Standard of Review and Applicable Law**

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

## **Equity Claim**

### **i. Applicable Law**

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

A taxpayer may otherwise show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.” *Id.* at 711.

The *Maxwell* test provides inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires residential assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

As it relates to Mirsky’s claim, the *Maxwell* equity analysis is done by comparing prior year sales (2014) to the current assessment (2015). Moreover, more than one comparable is necessary to prevail in an equity claim. *Montgomery Ward Dev. Corp. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992), *overruled on other grounds by Transform, Ltd. v. Assessor of Polk County*, 543 N.W.2d 614 (Iowa 1996).

## ii. Findings of Fact

Mirsky purchased the subject site in July 2009 and subsequently constructed a custom-built home on it. He now contends his property assessment is out-of-line with other properties in the neighborhood. Mirsky asserts he could never sell the subject property for its current assessed value.

Mirsky’s point of contention is in regards to the value attributed to the improvements. He asserts his “house is finished to a similar, if not lesser, level of finish as comparison properties” in the neighborhood. (PAAB Appeal). Mirsky submitted four properties he believes support his inequity claim. He calculated an assessed value per-square-foot for each of the properties based on the building assessed value, rather than

the total assessed value. He argues there is no justification for his improvements to be assessed at \$212 per-square-foot, when surrounding homes of similar style and size are assessed at no more than \$155 per-square-foot. (Exs. B & D). The following table summarizes the comparable properties.

Property/ Comparable	Total Assessed Value	Building Assessed Value	Gross Living Area (GLA)	Building Assessed Value/Sq Ft	Finished Basement	Quality Grade
Subject-- 285 49th Street	\$756,300	\$692,800	3265	\$212	1480 LQ & 390 Avg	1-05
1 - 286 49th Street	\$651,600	\$599,500	3866	\$155	1360 LQ	2+05
2 - 114 51st Street	\$609,600	\$508,200	3978	\$103	No Finish	2+00
3 - 24 52nd Street	\$562,800	\$410,700	3393	\$150	No Finish	2+00
4 - 217 49th Street	\$640,400	\$524,800	3762	\$139	300 LQ	1-05

All four comparable properties are located in the same neighborhood as Mirsky's property; have two-story homes; and were recently constructed, with the exception of 217 49th Street.

Mirsky believes all of the properties are reasonably similar. The properties do indeed possess some similarities but also points of difference, which ultimately affect their assessments. For example, at first it may appear the other homes have more square footage of living space than Mirsky's, but his home also has an additional 1870 square feet of basement finish. In comparison, only Comparable 1 has anything near this amount of basement finish. Additional points of difference include Comparables 1, 2, and 3 have lower quality grades than the subject and only two-car garages compared to the subject's three-car garage. All of the properties vary in bathroom counts and extra fixtures, and typically most have fewer of these amenities overall than Mirsky's property.

There is no indication in the record that any of the properties have recently sold, and Mirsky did not submit an opinion as to the fair market value for any of them; therefore, an assessment/sales ratio cannot be developed.

Mirsky also commented on an appraisal in the record; noting it had been commissioned by the bank in August 2011 for refinancing. (Ex. F). Given the date of the

appraisal, we find it is not a reliable indicator of the subject property's value on January 1, 2015.

Mirsky next questioned the rationale behind the assignment of grades, believing the grade on his property is arbitrarily higher than similar properties. Amy Rasmussen, Director of Litigation for the Polk County Assessor's Office, testified on behalf of the Board of Review and explained that the grade refers to the quality of construction. Rasmussen further explained that the grade essentially depends on the particular person that initially appraises a property.

Rasmussen also testified that the assessor's office relied on the cost approach for determining the assessed value of the subject property. Comparing the cost reports prepared for the subject and Mirsky's comparables shows that the quality grade factor plays a major role in determining the cost for each feature and fixture within each home. (Exs. B & D).

A thorough reading of the 2011 appraisal suggests Mirsky's home has sophisticated construction and high-quality features and design that might support its 1-05 grade. But if Mirsky believes his property is of a lower quality, then he might consider scheduling an appointment for an interior inspection by the County Assessor so his home may be re-evaluated.

### **Conclusions of Law**

Iowa law requires the taxpayer bear the burden of proof in a claim contending real property is not equitably assessed as compared with the assessments of other like property.

While Mirsky offered properties for consideration, his evidence fell short for demonstrating that the subject property's January 1, 2015, assessment was not conducted in a uniform manner as the assessments for neighboring properties. There is insufficient evidence in the record to complete the *Maxwell* analysis. There is no indication that any of Mirsky's selected properties recently sold, and he did not submit any other estimates of the market value of the properties. Furthermore, the 2011 appraisal is unreliable for determining the subject property's January 1, 2015 assessed value, as noted above.

Lastly, we note that it is not sufficient to merely challenge a portion of the assessment without challenging the assessment as a whole. The Iowa Courts have concluded the “ultimate issue...[is] whether the *total values* affixed by the assessment roll were excessive or inequitable.” *Deere Manufacturing Co. v. Zeiner*, 78 N.W.2d 527, 530 (Iowa 1956) (emphasis added). Thus, Mirsky would need to further examine the total assessment rather than just the value attributed to the improvements.

By a preponderance of all evidence in the record, and for the reasons stated above, we find Mirsky failed to prove the subject property is inequitably assessed


### **Order**

The Polk County Board of Review’s action is AFFIRMED.

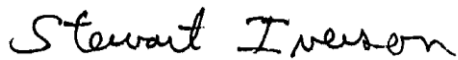
This Order is the final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 14th day of October, 2016.



Camille Valley, Presiding Officer



Stewart Iverson, Board Chair



Karen Oberman, Board Member

Copies to:

Roman Mirsky by eFile

Christina Gonzales by eFile